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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

TODD FURLONG, Plaintiff and Respondent, v. CITY OF INGLEWOOD et al., Defendants and Appellants.	B289695 (Los Angeles County Super. Ct. No. BS166454)

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Bergman Dacey Goldsmith, Gregory M. Bergman, Michele M. Goldsmith, and Jason J. Barbato for Defendants and Appellants.

Dawson & Riley, Andrew M. Dawson and Kimberly D. Riley for Plaintiff and Respondent.

This appeal is about a special statute of limitation governing when cities can discipline police. The City of Inglewood fired Officer Todd Furlong after he crashed his police car. Furlong petitioned the trial court to compel the City of Inglewood, the Inglewood City Council, and the Inglewood police chief (collectively, "the City") to reinstate him with back pay. Furlong claims the City violated the one-year statute of limitation by waiting too long to notify him of disciplinary action. The City argues a criminal investigation tolled the statute. The trial court found the City did not discipline Officer Furlong within the requisite statutory period. We affirm.

I

We summarize the facts.

Furlong got an emergency call while on patrol. He sped to respond and crashed on La Brea Avenue. Officials assigned traffic investigator Jeffrey LaGreek to the accident. LaGreek noted La Brea Avenue has two northbound and two southbound lanes at the scene. Furlong was driving in the left lane. A parked bus pulled away from the right lane's curb and began to enter the left lane. Furlong turned to avoid it, crashed into the center median, lost control, and hit a concrete column on the right curb.

LaGreek determined the bus driver caused the accident by making an "unsafe starting maneuver." LaGreek found Furlong's driving was an "associated factor" in causing the accident because Furlong violated Vehicle Code section 22350 by speeding. LaGreek's report included witness statements. One witness reported that, before the accident, Furlong paused at a red light, "sped away" through the red, and turned on his siren and emergency lights only later. Furlong wore no seatbelt.

LaGreek later testified he made a mistake in finding Furlong violated Vehicle Code section 22350 because, as a police officer responding to an emergency, Furlong was exempt from that section.

LaGreek testified he never conducted a criminal investigation of Furlong. LaGreek said he was going to "[g]o after the bus driver for felony hit and run."

The Traffic Collision Review Board reviewed the incident and LaGreek's report. It found Furlong violated a city rule by driving without "due regard" and broke police policy by not wearing his seatbelt. It also found Furlong had a pattern of negligence: in his three-year tenure with the City, he was at fault in four other car crashes.

The matter was referred to internal affairs. A commanding officer notified Furlong of a recommendation Furlong be fired for all his crashes. The chief of police approved the termination.

II

The City makes two arguments. Both are invalid.

Both arguments are attempts to escape a one-year deadline set by statute. The statute requires an agency to notify officers of any proposed punishment within one year of discovering the misconduct. (Gov. Code, § 3304, subd. (d)(1).) This one-year limitations period is tolled, however, if the misconduct is also the subject of a criminal investigation. (Gov. Code, § 3304, subd. (d)(2)(A) ["subdivision (d)(2)(A)"].)

This case turns entirely on subdivision (d)(2)(A) and whether LaGreek's investigation of Furlong's actions was or was not a "criminal investigation." Because subdivision (d)(2)(A) does not apply in this case, the City missed this statutory deadline by nine days. Furlong's legal position is correct, so we affirm.

The City's two invalid arguments are as follows. First, the City contends subdivision (d)(2)(A) applies because LaGreek's investigation of Furlong's misconduct truly was criminal in character. Second, the City argues this subdivision applies because Furlong's misconduct had a "possible connection" to LaGreek's

criminal investigation. We take up these two faulty arguments in turn. Our review in independent. (*Silver v. Los Angeles County Metropolitan Transportation Authority* (2000) 79 Cal.App.4th 338, 353.)

A

The first argument fails because, despite the City's insistence to the contrary, Furlong's misconduct was *not* the subject of LaGreek's criminal investigation.

This argument is about defining the scope of a criminal investigation. An investigation is not an object that can be measured with a ruler or weighed with a scale. Rather, an investigation is something people create when they decide to investigate something. We can discover the scope of these human creations by asking their authors. If investigators do not intend an investigation to encompass certain misconduct, the investigation presumably does not encompass that misconduct.

LaGreek testified he never investigated Furlong's conduct on a criminal allegation. No one impeached his testimony. Our record gives no reason to doubt him. He said his work concerning Furlong's actions was not a criminal investigation, so it was not.

The City highlights that LaGreek initially found Furlong's violation of Vehicle Code section 22350 was an associated factor for the accident. But LaGreek admitted this was an error because a statute exempts officers responding to emergency calls.

LaGreek's description of his own one-person investigation of Furlong is authoritative absent special circumstances. We have no special circumstances here.

One special circumstance might be if an investigator's superior ordered an investigation with a certain scope and the investigator disregarded that scope. Then the intent of the investigator's superior might control. That did not happen here.

Then-Sergeant Edward Ridens supervised LaGreek's investigation. Ridens's instructions to LaGreek were: "Let the facts lead you where [they] may. It is what it is. How the investigation comes up, that's how it comes up." LaGreek authored the investigation. He decided what to investigate and the nature of his investigation's scope. And LaGreek said he was not conducting a criminal investigation of Furlong's misconduct.

Because LaGreek did not intend to investigate whether Furlong was a criminal, the City did not need to delay its disciplinary investigation. Criminal investigations warrant delay because of their special character. Society's interest in complete criminal investigations and officers' interest in fair criminal investigations outweigh officers' entitlement to discipline that is speedy. (Cf. *Bacilio v. City of Los Angeles* (2018) 28 Cal.App.5th 717, 725 [statutes balance police rights to speedy investigations against the government's right to thorough criminal investigations conducted "on an efficient, but not unduly cramped, timetable"].) Completeness and fairness can take time: procedural safeguards in criminal cases can slow things down, and a more probing inquiry may be needed to develop proof beyond a reasonable doubt to the unanimous satisfaction of 12 jurors. (See, e.g., Gov. Code, § 3303, subd. (h) [mandating that interrogated police officers be informed of their constitutional rights if they may be charged with a criminal offense].) LaGreek ultimately was not aiming to build a criminal case against Furlong. At first LaGreek thought Furlong violated the Vehicle Code, but then LaGreek realized he misunderstood the law. So the law set a faster tempo for his noncriminal work.

The City cites an inapposite case. *Crawford v. City of Los Angeles* (2009) 175 Cal.App.4th 249, 255 (*Crawford*), held a criminal investigation need only examine potentially criminal conduct. But

no investigator in *Crawford* said "I did not criminally investigate this officer's conduct." *Crawford* is not on point.

In sum, the City's first argument fails.

B

The City's second argument is that Furlong's misconduct and LaGreek's investigation had a "possible connection" that warrants tolling the limitations period. This argument errs.

This argument misreads *Daugherty v. City & County of San Francisco* (2018) 24 Cal.App.5th 928 (*Daugherty*), which the City says is its "most important case." *Daugherty* held subdivision (d)(2)(A) applied where officers received disciplinary charges for exchanging offensive text messages uncovered in a criminal corruption investigation. (*Id.* at pp. 935–936.) Although the disciplined officers were not "targets" of the corruption investigation, the "text messages were examined for 'possible connection' between" the disciplined officers and "those involved in the criminal conspiracy." (*Id.* at p. 961, quoting *Richardson v. City & County of San Francisco Police Commission* (2013) 214 Cal.App.4th 671, 694 [holding tolling appropriate while officer's misconduct under criminal investigation for "any possible connection" to a check fraud case].) The text messages made the disciplined officers "persons of interest" and were "suggestive of the possibility [the disciplined officers] were willing to engage in criminal conduct" with the corruption investigation's target. (*Daugherty*, at p. 961.) Furlong's situation is not analogous to the *Daugherty* case because LaGreek was not investigating a conspiracy. Furlong's misconduct was not "suggestive of the possibility" Furlong was "willing to engage in criminal conduct" with the bus driver who hit him. And as with *Crawford*, no investigator in *Daugherty* said "I did not criminally investigate these officers' conduct."

In the other two cases the City cites, the disciplined officer was the subject of a criminal investigation. (*Parra v. City and County of San Francisco* (2006) 144 Cal.App.4th 977, 994 ["[T]he criminal investigation encompassed the misconduct of all officers who were involved in connection with the incident–including [the disciplined officer.]"]; *Lucio v. City of Los Angeles* (2008) 169 Cal.App.4th 793, 794 ["the [LAPD] conducted a months-long internal criminal investigation into [the disciplined officer's] conduct."].) Furlong, however, was not the subject of a criminal investigation.

At oral argument, the City claimed subdivision (d)(2)(A) should be interpreted to apply where *any* person's misconduct is criminally investigated, regardless of whether that person is a public safety officer. That argument does not fit statutory text. Subdivision (d)(2)(A) does not provide: "If the act, omission, or other allegation of misconduct *by anyone, whether or not they are a public safety officer*, is also the subject of a criminal investigation," the limitations period is tolled. No part of section 3304 provides a basis for importing into subdivision (d)(2)(A) the expansive language italicized above. Section 3304 deals with the discipline of misconduct by public safety officers, not other persons. (Gov. Code, § 3304.)

The City's second argument thus fares no better than its first.

DISPOSITION

The judgment is affirmed. Furlong is entitled to costs.

WILEY, J.

WE CONCUR:

BIGELOW, P. J. STRATTON, J.